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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PATRICK THOMAS O'CONNOR and DONALD REX BOYS

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Appeal 2008-1567  
Application 09/814,010  
Technology Center 3600

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Decided: May 22, 2008

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN and ROBERT E. NAPPI, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the final rejection of claims 35 and 36.

We affirm the Examiner's rejection of these claims.

INVENTION

The invention is directed to an Internet based appointment and reservation system. See pages 2 and 3 of Appellants' Specification. Claim 35 is representative of the invention and reproduced below:

35. An Internet-enabled appointment and reservation service system, comprising:

an Internet-connected appointment/reservation server executing first software; and

one or more subscribing businesses to the service, the businesses each having an internet-connected appliance executing second software;

wherein the appointment server, through the first software, presents to browsing clients an interactive interface enabling the clients to select individual ones of the subscribing businesses, and once a subscribing business is selected displays to the selecting client an interactive appointment/reservation schedule to select an appointment or reservation with the business, wherein the appointment server updates the appointment/reservation schedule at the server for each business as browsing clients make appointments/reservations, wherein the appointment/reservation server periodically provides updated appointment schedules to the subscribing businesses which are displayed by the second software interactively, allowing the subscribing businesses to further update the appointment reservation schedules and to return them to the appointment/reservation server, which updated versions then becomes the interactive schedules displayed to browsing clients.

#### REFERENCES

DeLorme	US 5,948,040	Sep. 7, 1999
Cummings, Jr.	US 6,345,260 B1	Feb. 5, 2002

#### REJECTION AT ISSUE

Claims 35 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Delorme in view of Cummings. The Examiner's rejection is on pages 3 through 6 of the Answer.

Throughout the opinion, we make reference to the Brief (received September 13, 2005) and the Answer (mailed June 4, 2007) for the respective details thereof.

## ISSUE

Appellants argue that the Examiner's rejection of claims 35 and 36 is in error as in the claimed invention appointments/ reservations are stored and updated at an appointment/ reservation server. The schedule is updated as a browsing client selects appointments, and the updated appointments are presented interactively to the subscribing business by the server. Brief 6. Appellants assert that DeLorme does not store the schedules at the server but rather that the schedules are maintained and updated at the subscribing business. Brief 7. Further, Appellants assert that Cummings does teach that periodic updates of appointments may be made, but that the "interaction involved in updating said schedules is between the browsing client and the subscribing business client, not between the browsing client and the appointment/reservation server, as in the invention of the present application." Brief 7-8. Appellants conclude:

[N]either reference teaches keeping and updating schedules and sharing them periodically with the business clients as well as browsing clients, the ability of the browsing clients to view updated and current schedules while selecting appointments or schedules, and the ability of the appointment/reservation server to serve as a real broker of service inventory to the browsing clients, by maintaining the updated schedules at the appointment/reservation server and sharing them periodically with the subscribing business clients.

Brief 8-9.

Thus, Appellants' contentions present us with the issue of whether the Examiner erred in determining that the combination of Delorme and Cummings teaches maintaining a schedule at a server, in which the schedule is updated as browsing clients make appointments and in which subscribing

businesses are both periodically provided with updates to the schedule and subscribing businesses provide further updates to the schedule as recited in claims 35 and 36.

#### PRINCIPLES OF LAW

“Once the PTO has made an initial determination that specified claims are not patentable (the *prima facie* case concept, *see In re Oetiker*, 977 F.2d 1443, 1448 (Fed.Cir.1992) (Plager, J. concurring)), the burden of production falls upon the applicant to establish entitlement to a patent. *See In re Spada*, 911 F.2d 705, 708, (Fed.Cir.1990); *In re King*, 801 F.2d 1324, 1327 (Fed.Cir.1986) (burden shifts to appellant after the PTO establishes a *prima facie* case of anticipation).” *In Re Morris* 127 F.3d 1048, 1054 (Fed. Cir. 1997)

#### FINDINGS OF FACT

1. DeLorme teaches a system wherein a traveler may from one interface, make reservations at any of a plurality of businesses. Col. 8, ll. 19-32, col. 31, ll. 42-51, col. 50, ll. 42-51.
2. DeLorme teaches that the schedule for events is kept in a central database. Col. 33, ll. 18-33. However, DeLorme does not teach that the schedule is updated based upon user interaction with users, nor does DeLorme teach that the schedule of reservations is kept at a central server.
3. Cummings teaches a system for scheduling an appointment with a professional (i.e. doctor, dentist, . . . etc.) when the professional’s office is closed. Abstract.

4. With Cummings' system a customer seeking the services of a professional contacts a call center. The call center logs into a server to gain access to an online master schedule database. The database contains all the appointment dates and times available for all physicians in the system. Col. 7, ll. 48-57, col. 8, ll. 1-10.
5. The customers can then tentatively book appointments with the physician of their choice. Cummings, col. 8, ll. 23-29.
6. Once all of the information concerning the tentative appointment is entered into a form, the master schedule database is updated. Cummings, col. 8, ll. 41-45.
7. The doctor's office may use a computerized scheduler (i.e. an application separate from the program on the server which maintains the master schedule database), in which case the process of updating the doctor's office calendar with the tentatively booked appointments may be automatic by clicking on a button to accept the appointment. Cummings, col. 9, ll. 45-59.
8. The doctor's office may also update the master scheduler from the doctor's electronic calendar. This updating can occur continuously. Cumming, col. 9, ll. 60-67.

#### ANALYSIS

Appellants' arguments on pages 6 through 9 of the Brief, are directed to claims 35 and 36 as a group. Thus, in accordance with 37 C.F.R. § 41.37 (c)(1)(vii) claims 35 and 36 are grouped together and we select claim 35 as representative of the group.

Appellants' arguments have not persuaded us that the Examiner erred in rejecting claim 35. We concur with Appellants' statements that DeLorme

does not store the appointments, which can be changed interactively, at the server. Fact 2. However, the Examiner has relied upon Cummings for this feature, Answer 4. We disagree with Appellants' assertion that in Cummings there is no interaction between the browsing client and the appointment server as recited in the claim.

Claim 35 recites that the server presents an interactive interface enabling the clients to select individual businesses and presents an interactive appointment reservation schedule. We consider this to be met by Cummings' teaching of the server providing access to the master schedule database. Fact 4. The interface is interactive in that the user can make tentative bookings. Fact 5. Claim 35 also recites that the server provides updates to the appointment schedule as a browsing client makes appointments. We consider this limitation to be met by Cummings' teaching that the master schedule data base is updated based upon the tentative bookings. Fact 6. Further, claim 35 recites that the server periodically provides updates using second software at the subscribers business interactively. We consider this limitation to be met by Cummings' teaching that the doctor's office can use an electronic calendar where the tentative appointment is placed upon the doctor's calendar; note the process of clicking on the tentative appointment to accept it is an interactive process. Fact 7. Claim 35 also recites that the subscribing business can further update the schedules on the appointment reservation server. We consider this limitation to be met by Cummings' teaching that the doctor's office can automatically, update the master scheduling calendar when the doctor's schedule changes. Fact 8. Finally, claim 35 recites that the updated versions of the interactive schedules are displayed to the clients. As we find that

Cummings teaches that the master schedule database is used interactively and that the updates to the master schedule database by the physicians, and by the process of booking tentative appointments occur continuously, we consider Cummings to teach that the updated version of the schedule is interactive.

For the aforementioned reasons, Appellants have not persuaded us that the Examiner erred in determining that the combination of Delorme and Cummings teaches maintaining a schedule at a server, in which the schedule is updated as browsing clients make appointments and in which subscribing businesses are both periodically provided with updates to the schedule and subscribing businesses provide further updates to the schedule as recited in claim 35. Accordingly, we sustain the Examiner's rejection of claims 35 and 36 under 35 U.S.C. § 103(a).

#### CONCLUSION

We affirm the Examiner's rejections of claims 35 and 36.

#### ORDER

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).



Appeal 2008-1567  
Application 09/814,010

AFFIRMED

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